IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CRML LEAVE TO APPEAL No. 215 of 2006

STATE

V/S

MAGGA RAM

Mr. HR SONI, PP, for the appellant / petitioner

Date of Order : 31.8.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned Public Prosecutor, and perused the impugned judgment and the record.

The case of the prosecution clearly is, that when the vehicle was intercepted two persons were there in the cabin, and on the vehicle being stopped, the person alighting from driver seat gave out his name to be Dhola Ram, and the other person gave out his name to be Magga Ram. Both the persons were prosecuted. However, Shri Dhola Ram died, and therefore the trial proceeded against Magga Ram. The learned trial court has acquitted the respondent Magga Ram, on the ground, that from the prosecution evidence it is not established, as to in what capacity Magga Ram was traveling in the vehicle, so also, that, any conscious possession of the substance can be attributed to Magga Ram.

Learned Public Prosecutor invited my attention to

the statement of P.W.20, and tried to convince that Magga Ram was the owner of the vehicle, though in records it was not registered in his name, and that Dhola Ram and Magga Ram were uncle and nephew, and therefore he should be taken to be in conscious possession of the substance.

I have considered the submission, and find, that even in the charge sheet it is not the case of the prosecution, that Magga Ram was traveling in the vehicle in the capacity of de-facto owner, nor is it alleged, that Magga Ram and Dhola Ram had any blood relationship, like that of uncle and nephew. Even the I.O. P.W.24 has not deposed, even by his word of mouth, that during his investigation it was revealed, that Magga Ram was traveling in the vehicle as de-facto owner of the vehicle, and/or that Magga Ram and Dhola Ram were related to each other, as uncle and nephew. In this background, from reading of the statement of P.W.20, in my view, it cannot be believed, that Magga Ram was de-facto owner. In cross-examination the witness has clearly admitted, that he does not know as to who was driving the tanker. He has even deposed to be not remembering for how much price the tanker was sold. In examination in chief he has deposed, that he had sold the tanker to Chaina Ram, but he did not get it transferred in the record, because he did not receive complete price. Thus, a total comprehension of the statement does show, that the witness is not telling truth, and he does not appear to be having any regard for truth either, admittedly this witness himself had got the vehicle released from the

Court. Thus, even after re-appreciation of the evidence, I am at one with the findings of the learned trial court, on the question of the prosecution having failed to establish the conscious possession of Magga Ram, the respondent, regarding the contraband substance.

Thus, I do not find any error in the finding of the learned trial court, acquitting the respondent. The petition for leave to appeal thus has no force, and is dismissed.

(N P GUPTA),J.

/Sushil/